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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Question of the impunity of perpetrators of violations of human rights
(civil and political rights): final report prepared by Mr. L. Joinet,
pursuant to Subcommission resolution 1995/35

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INTRODUCTION

1. This final report proposes a different approach from that generally used. It is almost six years since the Subcommission decided (August 1991) to undertake a study on the impunity of perpetrators of violations of human rights. The delay is due primarily to the decision taken halfway through the process to extend the study to cover violations of economic, social and cultural rights, and then to split it into two aspects, each dealt with by one of the original co-authors. It therefore seemed timely, as concerned the section on civil and political rights, which has been entrusted to the author of the present report, to present a final version of it in the form of a summary of both the preliminary report and the progress report - to which the reader is referred - entitled "Set of principles intended to strengthen action to combat impunity". This approach also enables the General Assembly's call for a significant reduction in the length of reports to be rigorously heeded.

2. The set of principles basically reproduces the guidelines proposed in paragraphs 127 and 130 of the preliminary report (E/CN.4/Sub.2/1993/6), which the Subcommission welcomed in its resolution 1993/37. The principles rest on three fundamental rights of victims: the right to know, the right to justice and the right to reparation, which are dealt with in the first three chapters of the set of principles. Their drafting was greatly facilitated by comments from Governments and non-governmental organizations, in reply to a note verbale of 10 December 1992. All of them are to be thanked.

3. These thanks are addressed in particular to the Subcommission's former Special Rapporteur on the right to restitution, compensation and rehabilitation, Mr. Theo van Boven. It should be recalled that in the preliminary report submitted to the Subcommission (para. 131.1), it was recommended that "the final report should take greater account of the suggestions made by Mr. van Boven in his study (E/CN.4/Sub.2/1992/8) concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms".

4. In conformity with that recommendation, it was proposed in paragraph 8 of the progress report (E/CN.4/Sub.2/1995/18), that "consideration should be given firstly to that part of the above-mentioned study by Mr. van Boven (E/CN.4/Sub.2/1993/8) entitled 'Individuals and collectivities as victims' (paras. 14 and 15), as well as chapter VII, 'The issue of impunity in relation to the right of reparation for victims of gross violations of human rights', and chapter IX, 'Proposed basic principles and guidelines', especially general principle 7".

5. At its forty-seventh session (August 1995), the sessional working group on the administration of justice and the question of compensation, which is chaired by Mr. Joinet in his capacity as a member of the Subcommission, considered the "Basic principles and guidelines", with the participation of Mr. van Boven. The comments of the sessional working group are reflected to a great extent in the proposal annexed to the present report.

6. These "Basic principles and guidelines" were definitively revised during a meeting of experts (Geneva, 20-22 February 1996) organized under the auspices of the Centre for Human Rights. The author of the present report

took part in this meeting, which was held under the chairmanship of Mr. van Boven at the initiative of the International Commission of Jurists and the Maastricht Centre for Human Rights of the University of Limburg.

7. It will be noted that, in this document, the "Basic principles and guidelines" have been reproduced as drafted by the expert meeting; except for some editorial changes, they have been incorporated into the "Set of principles" proposed as a basic reference for States involved in combating the impunity of perpetrators of violations of human rights, entitled "Set of principles for the protection and promotion of human rights through action to combat impunity".

I. BACKGROUND TO THE REPORT

8. In order better to understand this proposal, this report should be placed within the framework of the work of the Subcommission.

9. Thirty-eighth session (August 1985). Presentation by Mr. Joinet, in his capacity as Special Rapporteur on amnesty, of a final report entitled "Study on amnesty laws and their role in the safeguard and promotion of human rights" (E/CN.4/Sub.2/1985/16/Rev.1). The present report to a large extent draws on chapter III of that study.

10. Forty-third session (August 1991). In its decision 1991/110, the Subcommission asked two of its members, Mr. El Hadji Guissé and Mr. Joinet, to draft a working paper on the approaches that a study on impunity might take.

11. Forty-fourth session (August 1992). Following the submission of the working paper (E/CN.4/Sub.2/1992/18), the Subcommission decided, by its resolution 1992/23, to request the co-authors to draft a study on the impunity of perpetrators of violations of human rights. The Commission on Human Rights (in resolution 1993/43) and the Economic and Social Council (in decision 1993/266) approved this action.

12. Forty-fifth session (August 1993). Upon presentation of the preliminary report - and not the "progress" report as erroneously indicated (E/CN.4/Sub.2/1993/6) - the Subcommission requested the co-authors to extend their study to serious violations of economic, social and cultural rights.

13. Forty-sixth session (August 1994). After welcoming the preliminary report on the impunity of perpetrators of human rights violations (economic, social and cultural rights) (E/CN.4/Sub.2/1994/11 and Corr. 1), the Subcommission decided to split the study in two, entrusting Mr. Joinet with the aspect of civil and political rights and Mr. Guissé with that of economic, social and cultural rights, and noting that the two reports would be considered subsequently:

(a) The first under the agenda item entitled "The administration of justice and the human rights of detainees";

(b) The second under the agenda item entitled "The realization of economic, social and cultural rights".

14. Forty-seventh session (August 1995). Through its resolution 1995/35, the Subcommission welcomed with satisfaction the progress report by Mr. Joinet (E/CN.4/Sub.2/1995/18), which contained a summary of comments on certain matters of principle, and requested him to submit his final report in August 1996, at its forty-eighth session.

15. Forty-eighth session (August 1996). This final report is submitted to the Subcommission at its present session in accordance with the above-mentioned resolution.

II. GENERAL PRESENTATION

16. The set of principles consists of five parts.

17. Part I comprises the preamble, which recalls the United Nations texts under which this initiative is proposed. The reference to recommendation II.91 (on combating impunity) of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (Vienna, June 1993) should be particularly stressed.

18. Part II contains several definitions essential for the interpretation of the principles. These concern the terms "impunity"; "reference period" - which concerns the period during which impunity prevailed - and "grave crimes under international law", which covers crimes identified as such both by international human rights law and by international humanitarian law, namely, crimes against humanity, war crimes and grave breaches of the Geneva Conventions of 12 August 1949 and Protocols I and II of 8 June 1977.

19. The next three parts, which comprise the main substance of the text, are devoted, respectively, to rights which, as the rights of victims, constitute the basis for combating impunity: the right to know, the right to justice and the right to reparation.

20. Part III concerns the right to know. It first sets out general principles such as the right to the truth and the duty to remember. It then focuses on two proposals: the prompt creation of extrajudicial commissions of inquiry as a preliminary stage in establishing the truth, particularly when it has previously been denied, and urgent steps to be taken with regard to the preservation of, and access to, the archives of the reference period.

21. Part IV, on the right to justice, also discusses several general principles and then deals with the assignment of jurisdictions to national courts, foreign courts and international courts, paying particular attention to the importance of norms of universal jurisdiction. A second subsection contains a series of principles (principles 27 to 35) enumerating restrictions which are admissible because they are aimed at avoiding the application of certain rules of law in a manner that would encourage impunity. These have to do with prescription, amnesty, the right of asylum, extradition, exclusion of the in absentia procedure, due obedience, the irremovability of judges, and military courts.

22. Part V on the right to reparation, taken in the broadest sense (see paras. ... to ... above), is composed of three subsections dealing, respectively, with:

(a) General principles: rights and duties of victims and States. Who is entitled to the right to reparation? What procedures are applicable and how should they be publicized?, etc.;

(b) Individual measures to implement the three components of the right to reparation, namely, the right to restitution, the right to compensation and the right to rehabilitation;

(c) General and collective measures, such as measures of satisfaction (recognition by the State of its responsibilities, annual payment of damages to the victims) and guarantees of non-repetition (disbanding of militias of all kinds, repeal of emergency legislation, abolition of emergency courts, administrative measures to be taken in respect of State officials who collaborated and guarantees which they must be afforded).

23. Part VI contains an interpretative provision stating that the definition of the "reference period" cannot be interpreted as exempting or having exempted States from the implementation and observance of the set of principles during the reference period.

24. The attached annex contains the text of the "Set of principles for the protection and promotion of human rights through action to combat impunity", preceded by a synoptical table designed to make it easier to use.

III. PROPOSALS AND RECOMMENDATIONS

25. It is proposed that, after having considered the present report in the light of the two preceding reports, the Subcommission should transmit it to the Commission on Human Rights, with comments for submission to the Economic and Social Council and to the General Assembly on the basis of the usual procedure.

IV. CONCLUSION

26. "From the origins of mankind until the present day, the history of impunity is one of perpetual conflict and strange paradox: conflict between the oppressed and the oppressor, civil society and the State, the human conscience and barbarism; the paradox of the oppressed who, released from their shackles, in their turn take over the responsibility of the State and find themselves caught in the mechanism of national reconciliation, which moderates their initial commitment against impunity". This statement, which introduced the preliminary report submitted to the Subcommission in 1993, could well be cited as a conclusion.

27. The proposal being made by the Special Rapporteur must not be seen as an obstacle to national reconciliation, but rather as a means of avoiding distortions so that, once beyond the first stage of "conciliation", it may be possible to build the foundation for just and lasting reconciliation.

Annex I

SYNOPTICAL TABLE OF THE SET OF PRINCIPLES FOR THE PROTECTION AND
PROMOTION OF HUMAN RIGHTS THROUGH ACTION TO COMBAT IMPUNITY

I. PREAMBLE

II. DEFINITIONS

"Impunity", "reference period", "crimes under international law"

III. THE RIGHT TO KNOW

A. General principles

- Principle 1: The inalienable right to the truth
- Principle 2: The duty to remember
- Principle 3: The victims' right to know
- Principle 4: Guarantees to give effect to the right to know

B. Extrajudicial commissions of inquiry

- Principle 5: Role of the extrajudicial commissions of inquiry
- Principle 6: Guarantees of independence and impartiality
- Principle 7: Definition of the commissions' terms of reference
- Principle 8: Guarantees for persons implicated
- Principle 9: Guarantees for witnesses and victims
- Principle 10: Operation of the commissions
- Principle 11: Advisory functions of the commissions
- Principle 12: Publicizing the reports of the commissions

C. Preservation of and access to reference period archives

- Principle 13: Measures for the preservation of archives
- Principle 14: Administrative measures relating to archive inventories
- Principle 15: Administration of archive centres
- Principle 16: Measures to facilitate access to archives
- Principle 17: Cooperation between archive departments and the courts and extrajudicial commissions of inquiry
- Principle 18: Specific measures relating to archives containing names

IV. RIGHT TO JUSTICE

A. General principles

- Principle 19: Purpose of the right to justice
- Principle 20: Duties of States with regard to the administration of justice

B. Distribution of jurisdiction between national, foreign and international courts

- Principle 21: Jurisdiction of national courts
- Principle 22: Jurisdiction of foreign courts
- Principle 23: Measures to strengthen the effectiveness of treaty provisions on universal jurisdiction
- Principle 24: Measures to determine extraterritorial jurisdiction in internal law
- Principle 25: Jurisdiction of international courts
- Principle 26: Rules of procedure applicable in international courts

C. Restrictive measures justified by action to combat impunity

- Principle 27: Scope of restrictive measures
- Principle 28: Restrictions relating to prescription
- Principle 29: Restrictions relating to amnesty
- Principle 30: Restrictions relating to the right of asylum
- Principle 31: Restrictions relating to extradition
- Principle 32: Restrictions relating to the exclusion of in absentia procedure
- Principle 33: Restrictions on the principle of due obedience and on the effects of legislation on repentance
- Principle 34: Restrictions on the principle of the irremovability of judges
- Principle 35: Restrictions on the jurisdiction of military courts

V. RIGHT TO REPARATION

A. General principles

- Principle 36: Rights and duties arising out of the obligation to make reparation
- Principle 37: Beneficiaries of the right to reparation
- Principle 38: Reparation procedures
- Principle 39: Publicizing reparation procedures
- Principle 40: Scope of the right to reparation

B. Individual measures of reparation

- Principle 41: Measures of restitution
- Principle 42: Measures of compensation
- Principle 43: Measures of rehabilitation

C. General measures of reparation

- Principle 44: Measures of satisfaction

D. Guarantees of non-repetition

- Principle 45: Areas affected by guarantees of non-repetition
- Principle 46: Disbandment of unofficial armed groups directly or indirectly linked to the State and of private groups benefiting from its passivity
- Principle 47: Repeal of emergency legislation and abolition of emergency courts
- Principle 48: Administrative and other measures relating to State officials
- Principle 49: Implementation of administrative measures
- Principle 50: Nature of measures that can be taken against State officials

VI. INTERPRETATIVE PROVISION

Annex II

SET OF PRINCIPLES FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS THROUGH ACTION TO COMBAT IMPUNITY

I. PREAMBLE

Recalling the Preamble of the Universal Declaration of Human Rights, which states that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind,

Aware that there is always a risk that such acts may occur,

Reaffirming the commitment made by the Member States under Article 56 of the Charter of the United Nations to take joint and separate action, giving full importance to developing effective international cooperation for the achievement of the purposes set forth in Article 55 of the Charter concerning universal respect for, and observance of, human rights and fundamental freedoms for all,

Considering that the duty of every State under international law to respect and to secure respect for human rights requires that effective measures should be taken to combat impunity,

Recalling the recommendation contained in paragraph 91 of Part II of the Vienna Declaration and Programme of Action, wherein the World Conference on Human Rights (June 1993) expressed its concern about the impunity of perpetrators of human rights violations and encouraged the efforts of the Commission on Human Rights and the Subcommission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue,

Convinced, therefore, that national and international measures must be taken for that purpose with a view to securing jointly, in the interests of the victims of human rights violations, observance of the right to know, the right to justice and the right to reparation, without which there can be no effective remedy against the pernicious effects of impunity,

Decides, pursuant to the aforesaid recommendation of the Vienna Declaration and Programme of Action, solemnly to proclaim the following principles for the guidance of States having to combat impunity.

II. DEFINITIONS

A. Impunity

"Impunity" means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to them being accused, arrested, tried and, if found guilty, convicted.

B. Reference period

"Reference period", as used in these principles, means the period of impunity delimited by fixed dates referring to events which marked the appearance and later cessation of a consistent pattern of gross violations of human rights.

C. Serious crimes under international law

This term, as used in these principles, covers war crimes, crimes against humanity and grave breaches within the meaning of the Geneva Conventions of 12 August 1949 and Additional Protocols I and II of 8 June 1977.

III. THE RIGHT TO KNOW

A. General principles

PRINCIPLE 1. THE INALIENABLE RIGHT TO THE TRUTH

Every society has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.

PRINCIPLE 2. THE DUTY TO REMEMBER

A people's knowledge of the history of their oppression is part of their heritage and, as such, shall be preserved by appropriate measures in fulfilment of the State's duty to remember. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments.

PRINCIPLE 3. THE VICTIMS' RIGHT TO KNOW

Irrespective of any legal proceedings, the families of victims shall have the right to know the truth about the fate of their relatives. In cases of enforced disappearance or of abduction of children, this right shall be imprescriptible.

PRINCIPLE 4. GUARANTEES TO GIVE EFFECT TO THE RIGHT TO KNOW

To give effect to the right to know, States should take the following measures with a view to establishing extrajudicial commissions of inquiry and ensuring the preservation of, and access to, archives of the reference period.

B. Extrajudicial Commissions of Inquiry

PRINCIPLE 5. ROLE OF THE EXTRAJUDICIAL COMMISSIONS OF INQUIRY

The Extrajudicial Commissions of Inquiry shall have the task of establishing the facts so that the truth can be found. In order to restore

the dignity of the victims, families and human rights defenders, these investigations shall be conducted with the object of securing recognition of such truth as were constantly denied during the reference period.

PRINCIPLE 6. GUARANTEES OF INDEPENDENCE AND IMPARTIALITY

In order to found their legitimacy upon incontestable guarantees of independence and impartiality, the Commissions:

(a) Shall be established by law or, depending on the circumstances, by a contractual instrument concluding a process of national dialogue or a peace accord;

(b) Shall be constituted in accordance with criteria making clear to the public the impartiality of their members and on conditions ensuring their independence, in particular by the irremovability of their members for the duration of their terms of office.

PRINCIPLE 7. DEFINITION OF THE COMMISSIONS' TERMS OF REFERENCE

The terms of reference of the Commissions shall be set forth clearly and shall incorporate at least the following stipulations and limitations:

(a) They shall not have authority to act as substitutes for the courts, which shall alone have jurisdiction to establish individual criminal responsibility with a view to reaching a decision as to guilt and, where appropriate, passing sentence;

(b) Within the limits of the reference period, their investigations shall relate to all persons cited in allegations of human rights violations, whether they ordered them or actually committed them, acting as perpetrators or accomplices, and whether they are public officials or members of quasi-governmental or private armed groups, or of non-governmental armed movements having the status of belligerents; all other armed organized groups shall be treated as such;

(c) The Commissions shall have jurisdiction to consider all forms of human rights violations. Their investigations shall focus as a matter of priority on those violations appearing to constitute a consistent pattern of gross violations. They shall endeavour to analyse and describe the machinery of the State through which the violating system operated, to identify the administrations, agencies and private entities involved and reconstruct their roles, and to safeguard evidence for later use in the administration of justice.

PRINCIPLE 8. GUARANTEES FOR PERSONS IMPLICATED

Any persons implicated when the facts are established shall be entitled, especially if the Commission is permitted under its terms of reference to divulge their names, to the following guarantees based on the adversarial principle:

(a) The information must be corroborated by at least two sources;

(b) The person implicated shall have the opportunity to make a statement setting out his or her version of the facts or, within the time prescribed by the instrument establishing the Commission, to submit a document equivalent to a right of reply for inclusion in the file. The rules of evidence provided for in principle 18 (c) shall apply.

PRINCIPLE 9. GUARANTEES FOR WITNESSES AND VICTIMS

Steps shall be taken to guarantee the security and protection of witnesses and victims. If anonymity is deemed necessary in their interests, it may be allowed only on three conditions, namely:

(a) That it is an exceptional measure;

(b) That the Chairman and one member of the Commission were empowered, at the time of its establishment to examine requests for anonymity and make confidential inquiries about the identity of the witnesses in order to assure themselves, and therefore be able to guarantee to the other members of the Commission, that they are authentic;

(c) That reference is made in the report to the content of the testimony if it is accepted by the Commission.

PRINCIPLE 10. OPERATION OF THE COMMISSIONS

The Commissions shall be provided with:

(a) Transparent funding to prevent them from coming under suspicion;

(b) Sufficient material and human resources for their credibility not to be open to question.

PRINCIPLE 11. ADVISORY FUNCTIONS OF THE COMMISSIONS

The Commissions' terms of reference shall include provisions calling for them to make recommendations in their final reports.

These recommendations shall contain proposals aimed, inter alia, on the basis of the facts and of any responsibility that has been established, at encouraging the perpetrators of the violations to show their repentance in appropriate forms that would promote national reconciliation so that a pardon, a private act that is necessary to achieve just and lasting reconciliation, can later be legitimately granted.

The recommendations shall, in addition, set out legislative or other measures to put these principles into effect and to prevent any further violations. These measures shall primarily concern the army, police and justice system and the strengthening of democratic institutions.

PRINCIPLE 12. PUBLICIZING THE REPORT OF THE COMMISSIONS

For security reasons or in order to avoid pressure on witnesses and Commission members, the Commissions' terms of reference may stipulate that the inquiry shall be kept confidential. The final report, on the other hand, should always be made public and be disseminated as widely as possible.

Commission members shall be protected by immunity from any defamation or other proceedings that might be filed against them in connection with material contained in the report.

C. Preservation of and access to reference period archives

PRINCIPLE 13. MEASURES FOR THE PRESERVATION OF ARCHIVES

The right to know means that archives should be preserved. Technical measures of a protective nature shall be taken at the conclusion of the reference period to prevent the removal, destruction, concealment or falsification of the archives of the reference period.

These urgent measures shall be followed by legislative or other reforms permanently governing the storage and preservation of and access to the archives in accordance with the principles set out below; specific measures shall be taken in the case of archives containing names in accordance with principle 18.

Severe penalties shall be laid down for misappropriation of archives, especially with a view to negotiating payment for them.

PRINCIPLE 14. ADMINISTRATIVE MEASURES RELATING TO ARCHIVE INVENTORIES

Priority shall initially be given to drawing up inventories of the archives stored and ascertaining the reliability of existing inventories. Special attention shall be given to archives of places of detention, in particular when such places did not exist officially.

PRINCIPLE 15. ADMINISTRATION OF ARCHIVE CENTRES

Measures shall be taken to place each archive centre under the responsibility of a specifically designated person. If that person was already in charge of the archive centre during the reference period, he or she must be explicitly redesignated, subject to the modalities stipulated in principles 49 and 50.

PRINCIPLE 16. MEASURES TO FACILITATE ACCESS TO ARCHIVES

Access to archives shall be facilitated, in the interest of historical research in particular. Authorization formalities shall have the sole purpose of controlling access and may not be used for purposes of censorship.

PRINCIPLE 17. COOPERATION BETWEEN ARCHIVE DEPARTMENTS AND THE COURTS AND
EXTRAJUDICIAL COMMISSIONS OF INQUIRY

The courts and extrajudicial commissions of inquiry, as well as the investigators reporting to them, shall have free access to archives. The argument of confidentiality may not be used to prevent access. In accordance with their sovereign powers of assessment, however, the courts and extrajudicial commissions of inquiry may decide, in exceptional circumstances, not to make certain information public if it might jeopardize proceedings in progress.

PRINCIPLE 18. SPECIFIC MEASURES RELATING TO ARCHIVES CONTAINING NAMES

(a) For the purposes of this principle, archives containing names shall be understood to be those archives containing information that make it possible, in any way whatsoever, directly or indirectly, to identify the individuals to whom they relate, regardless of whether such archives are on paper or in computer files.

(b) Everyone shall be entitled to know whether his or her name appears in the archives stored during the reference period, and, if it does, to use his or her right of access and subsequently to challenge the validity of the relevant information by exercising his or her right of reply. The document containing his or her own version shall be attached to the document being challenged.

(c) Except where it relates to officials of the security services or persons working with them on an ongoing basis, the information in the security and information service archives containing names shall not by itself constitute incriminating evidence, unless it is corroborated by several different reliable sources.

IV. RIGHT TO JUSTICE

A. General principles

PRINCIPLE 19. PURPOSE OF THE RIGHT TO JUSTICE

There can be no just and lasting reconciliation, as stated in principle 11, without an effective response to the need for justice; the prerequisite for any reconciliation is forgiveness, which is a private act that implies that the victim knows the perpetrator of the violations and that the latter has been able to show repentance. Over and above any verdict, that is the essential purpose of the right to justice.

PRINCIPLE 20. DUTIES OF STATES WITH REGARD TO THE ADMINISTRATION OF JUSTICE

Impunity is a failure of States to meet their obligations under international law to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, ensure that they are prosecuted and tried and provide the victims with effective remedies.

Although the decision to prosecute is primarily within the competence of the State, supplementary procedural rules should be set forth to enable any

victim to institute proceedings on his or her own behalf, especially in cases where the authorities fail to do so, or to become an associated party. This option shall be extended to non-governmental organizations able to show proof of long-standing activities for the protection of the victims concerned.

B. Distribution of jurisdiction between national, foreign
and international courts

PRINCIPLE 21. JURISDICTION OF NATIONAL COURTS

As a rule, the national courts shall have jurisdiction. However, the subsidiary jurisdiction of a foreign court or concurrent jurisdiction of an international court may be accepted when, in view of the circumstances, the national courts are not yet in a position to respond satisfactorily to the justice requirements of a constitutional State or are physically unable to function.

PRINCIPLE 22. JURISDICTION OF FOREIGN COURTS

The subsidiary jurisdiction of foreign courts shall be exercised by virtue either of a provision on universal jurisdiction set forth in a treaty in force or of a provision of internal law establishing a rule of extraterritorial jurisdiction for serious crimes under international law.

PRINCIPLE 23. MEASURES TO STRENGTHEN THE EFFECTIVENESS OF TREATY PROVISIONS
ON UNIVERSAL JURISDICTION

(a) A provision on universal jurisdiction applicable to serious crimes under international law should be included in all international human rights instruments dealing with such crimes;

(b) By ratifying such instruments, States pledge, pursuant to such a provision, to seek and prosecute the perpetrators of the crimes mentioned above when there are serious reasons to believe that such persons are in their territory, with a view to trying or extraditing them. They are consequently bound to take legislative or other measures under internal law to ensure the implementation of the provision on universal jurisdiction.

PRINCIPLE 24. MEASURES TO DETERMINE EXTRATERRITORIAL JURISDICTION IN
INTERNAL LAW

In the absence of a ratification making it possible to apply such a provision to the country where the crime was committed, and notwithstanding the principle of sovereignty according to which States shall have recourse to criminal legislation only when there is a direct link - territorial or personnel - between the State and the crime, States shall take measures in their internal legislation to establish extraterritorial jurisdiction over serious crimes under international law which have been committed outside their territory, whatever the nationality of the perpetrator or the victim, and which by their nature are within the purview not only of internal criminal law but also of a system of international jurisdiction to which the concept of frontiers is alien.

PRINCIPLE 25. JURISDICTION OF INTERNATIONAL COURTS

To meet the need for justice effectively, a standing international criminal court should be set up with concurrent jurisdiction binding on all Member States. As a transitional measure, a court may be provided for in a treaty or ad hoc courts established.

Whenever an international court is seized for the purpose of trying the perpetrators of gross and systematic violations of human rights during the reference period, priority shall be given to prosecuting the perpetrators of serious crimes under international law.

PRINCIPLE 26. RULES OF PROCEDURE APPLICABLE IN INTERNATIONAL COURTS

The rules of procedure applicable in international courts shall conform to the provisions of articles 8 to 11 of the Universal Declaration of Human Rights and 9, 14 and 15 of the International Covenant on Civil and Political Rights with regard to the right to a fair hearing.

C. Restrictive measures justified by action to combat impunity

PRINCIPLE 27. SCOPE OF RESTRICTIVE MEASURES

Restrictive measures shall be taken in the legal areas which might favour impunity. The following areas in particular are concerned: prescription, amnesty, right to asylum, extradition, absence of in absentia procedure and due obedience, as well as legislation on repentance, the irremovability of judges and the jurisdiction of military courts.

PRINCIPLE 28: RESTRICTIONS RELATING TO PRESCRIPTION

The period during which no effective remedies against a criminal offence are in existence shall not count towards the prescription of the offence.

Prescription shall not be applicable to serious crimes under international law which, independently of the injury caused to the victim, constitute so grave an undermining of human dignity that they are by their very nature imprescriptible, in order to prevent the course of justice from being thwarted.

Prescription shall not be applicable to civil, administrative or disciplinary actions brought by victims seeking compensation for injury.

PRINCIPLE 29. RESTRICTIONS RELATING TO AMNESTY

When amnesty is intended to establish conditions conducive to a peace agreement or to foster national reconciliation, it shall be subject to the following rules:

(a) The perpetrators of serious crimes under international law and the perpetrators of gross and systematic violations may not be included in the amnesty as long as the victims have been unable to avail themselves of an effective remedy or to obtain a fair and effective decision;

(b) In so far as it may imply an admission of guilt, amnesty cannot be imposed on individuals prosecuted or sentenced for acts connected with the peaceful exercise of their right to freedom of opinion and expression. When they have done nothing but exercise this legitimate right, as guaranteed by articles 18 to 20 of the Universal Declaration of Human Rights and 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights, the law shall consider any judicial or other decision concerning them to be null and void; their detention shall be ended unconditionally and without delay;

(c) Any individual convicted of offences other than those laid down in paragraph (b) of this principle who comes within the scope of the amnesty is free to refuse it and request a retrial if he has been tried without benefit of the right to a fair hearing guaranteed by articles 10 and 11 of the Universal Declaration of Human Rights and articles 9, 14 and 15 of the International Covenant on Civil and Political Rights or if he has been subjected to inhuman or degrading interrogation, especially under torture.

PRINCIPLE 30. RESTRICTIONS RELATING TO THE RIGHT OF ASYLUM

Under article 1, paragraph 2, of the Declaration on Territorial Asylum, adopted by the General Assembly on 14 December 1967, and article 1 F of the Convention relating to the Status of Refugees of 28 July 1951, States may not extend such protective status, including diplomatic asylum, to persons with respect to whom there are serious reasons to believe that they have committed a serious crime under international law.

PRINCIPLE 31. RESTRICTIONS RELATING TO EXTRADITION

Unless they are likely to be subject to the death penalty in the requesting country, persons who have committed serious crimes under international law may not, in order to avoid extradition, avail themselves of the favourable provisions generally relating to political offences or of the principle of non-extradition of nationals.

PRINCIPLE 32. RESTRICTIONS RELATING TO THE EXCLUSION OF IN ABSENTIA PROCEDURE

Except for establishing a guarantee of impunity, non-recognition of in absentia procedure by a legal system should be limited to the sentencing stage to enable the necessary investigations, including the hearing of witnesses and victims, to be carried out and charges to be preferred, followed by wanted notices and arrest warrants, if necessary international, executed according to the procedures laid down in the Constitution of the International Criminal Police Organization (ICPO) - Interpol.

PRINCIPLE 33. RESTRICTIONS ON THE PRINCIPLE OF DUE OBEDIENCE AND ON THE EFFECTS OF LEGISLATION ON REPENTANCE

The fact that violations have been committed by a subordinate does not exempt his superiors from responsibility if they have failed to make use of the powers vested in them to prevent or halt the violation upon learning that it was being, or was about to be, committed.

The fact that the perpetrator of violations acted on the orders of his Government or of a superior does not exempt him from responsibility, including criminal responsibility, or constitute a mitigating circumstance, but is simply a reason for reducing the sentence.

Similarly, the fact that the perpetrator, after the reference period, reveals such violations or violations committed by others in order to benefit from the favourable provisions of laws on genuine repentance cannot exempt him from responsibility, including criminal responsibility. It may however be grounds for reducing the penalty in order to promote disclosure of the truth.

When the revelations have been made during the reference period, this mitigation may go so far as absolute discharge. In such cases, and notwithstanding principle 30, asylum, excluding refugee status, may be granted to the author of the revelations in order to facilitate disclosure of the facts during the reference period.

PRINCIPLE 34. RESTRICTIONS ON THE PRINCIPLE OF THE IRREMOVABILITY OF JUDGES

The principle of irremovability, as the basic guarantee of the independence of judges, must be observed in respect of judges who have been appointed in accordance with a procedure consistent with a constitutional State. Conversely, judges appointed by the Executive or who have derived their judicial power from an act of allegiance to the Executive power during the reference period may be relieved of their functions by the Executive in accordance with the principle of parallelism. They may ask to be afforded the guarantees laid down in principle 50 (d), in particular with a view to seeking reinstatement, where applicable.

PRINCIPLE 35. RESTRICTIONS ON THE JURISDICTION OF MILITARY COURTS

In order to avoid military courts, in those countries where they have not yet been abolished, helping to perpetuate impunity by virtue of a lack of independence resulting from the chain of command to which all or some of their members are subject, their jurisdiction must be limited solely to offences committed among military personnel.

V. RIGHT TO REPARATION

A. General principles

PRINCIPLE 36. RIGHTS AND DUTIES ARISING OUT OF THE OBLIGATION TO MAKE REPARATION

Any human rights violation gives rise to a right to reparation on the part of the victim and a duty on the part of the State to make reparation; this duty includes the obligation to afford guarantees of the non-repetition of the violations.

PRINCIPLE 37. BENEFICIARIES OF THE RIGHT TO REPARATION

Individual beneficiaries of this right are the victims themselves, their parents, their dependants and persons able to demonstrate a special relationship with the victim.

PRINCIPLE 38. REPARATION PROCEDURES

All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings covered by the restrictions on prescription set out in Principle 29. This procedure shall afford them protection against intimidation and reprisals. Exercise of the right to reparation includes access to the applicable international procedures.

The right to reparation may be exercised collectively within the context of appropriate bilateral or inter-State procedures.

PRINCIPLE 39. PUBLICIZING REPARATION PROCEDURES

Procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private, as well as public, communications media. This dissemination should take place both within and outside the country, particularly in countries to which large numbers of victims have been forced into exile.

PRINCIPLE 40. SCOPE OF THE RIGHT TO REPARATION

The right to reparation shall cover all injuries suffered by the victim; it shall include individual measures concerning the right to restitution, compensation and rehabilitation, as well as general reparation measures such as measures of satisfaction and guarantees of non-repetition.

B. Individual measures of reparation

PRINCIPLE 41. MEASURES OF RESTITUTION

Restitution, the purpose of which shall be to re-establish for the victim the situation prevailing before the reference period, entails restoring, inter alia, the exercise of individual freedoms and the right to citizenship, to family life, to return to one's country, to employment and to property ownership.

PRINCIPLE 42. MEASURES OF COMPENSATION

Compensation shall be equal to the financially assessable value of all damage suffered, particularly:

- (a) Physical or mental injury, including pain, suffering and emotional shocks;
- (b) The loss of an opportunity, including educational opportunities;

- (c) Material damage and loss of income, including loss of earnings;
- (d) Attacks on reputation or dignity;
- (e) Costs of legal assistance and valuations.

PRINCIPLE 43. MEASURES OF REHABILITATION

Measures of rehabilitation shall cover the cost of medical, psychological or psychiatric care, as well as social, legal and other services.

C. General measures of reparation

PRINCIPLE 45. MEASURES OF SATISFACTION

Symbolic measures shall be taken in the following areas as moral and collective reparation and to satisfy the duty to remember:

- (a) Public recognition by the State of its responsibility;
- (b) Official declarations restoring the dignity of the victims;
- (c) Commemorative ceremonies, naming of public thoroughfares, monuments, etc.;
- (d) Annual tribute to the victims;
- (e) Inclusion in history textbooks and human rights training manuals of a faithful account of exceptionally serious violations committed during the reference period.

D. Guarantees of non-repetition

PRINCIPLE 45. AREAS AFFECTED BY GUARANTEES OF NON-REPETITION

The State shall take appropriate measures to ensure that the victims are not again confronted with violations which undermine their dignity. Priority consideration shall be given to:

- (a) Measures to disband parastatal armed groups;
- (b) Measures repealing emergency provisions, legislative or otherwise, which have been conducive to violations;
- (c) Administrative or other measures concerning State officials who assumed responsibilities in that regard during the reference period.

PRINCIPLE 46. DISBANDMENT OF UNOFFICIAL ARMED GROUPS DIRECTLY OR INDIRECTLY LINKED TO THE STATE AND OF PRIVATE GROUPS BENEFITING FROM ITS PASSIVITY

In order to ensure their effective disbandment, the measures to be taken shall be first and foremost in the following areas:

(a) Reconstruction of organizational structure by identifying operatives so as to reveal their position, if any, in the administration, particularly in the army and the police, and by determining the covert links which they maintained with their active or passive partners, particularly in the information and security services or in pressure groups;

(b) Thorough investigation of the information and security services with a view to redefining their functions;

(c) Securing the cooperation of third countries which might have contributed to the creation and development of such groups, particularly by providing financial or logistical support;

(d) Drawing up a recycling plan to ensure that members of such groups are not tempted to join the ranks of organized crime.

PRINCIPLE 47. REPEAL OF EMERGENCY LEGISLATION AND COURTS

Emergency legislation and courts of any type adopted or set up during the reference period must be repealed or abolished in so far as they infringe the fundamental rights and freedoms guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Habeas corpus, whatever name it may be known by, must be considered a fundamental right of the individual and as such an inalienable right.

PRINCIPLE 48. ADMINISTRATIVE AND OTHER MEASURES RELATING TO STATE OFFICIALS

These measures are of a preventive and non-punitive character; they may therefore be taken by administrative decision, provided that the implementation procedures are provided for by legislation or by a contractual agreement instrument resulting from a process of national dialogue or by a peace accord, as the case may be.

They are intended to avoid any administrative obstacle or challenge to the process of restoring, or the transition to, peace and/or democracy initiated at the end of the reference period.

They are therefore quite distinct from the punitive and judicial measures provided for in principles 19 et seq. to be applied by the courts to persons prosecuted and tried for human rights violations.

PRINCIPLE 49. IMPLEMENTATION OF ADMINISTRATIVE MEASURES

Implementation should be preceded by an inventory of positions of responsibility with important decision-making power and therefore an obligation of loyalty to the process in progress. In the inventory, priority should be given to positions of responsibility in the army, the police and the judiciary.

In assessing the situation of each serving official, consideration will be given to:

- (a) His background as regards the rule of law prevailing during the reference period, particularly in the human rights field;
- (b) Non-involvement in corruption;
- (c) Professional competence;
- (d) Skill in promoting the peace and/or democratization process, particularly with regard to the observance of constitutional guarantees and human rights.

Decisions shall be made under the responsibility of the head of Government, on the reasoned proposal of the supervising minister after the official concerned has been informed of the complaints against him and has been given a due hearing.

The official may appeal to the appropriate administrative court.

However, in view of the special circumstances inherent in any transition period, the appeal may be heard by an ad hoc commission with exclusive jurisdiction, provided that it meets the criteria of independence, impartiality and procedure laid down in principles 6, 7 (a), 8 (a) and (b) and 10.

PRINCIPLE 50. NATURE OF MEASURES THAT CAN BE TAKEN AGAINST STATE OFFICIALS

Except where he has been confirmed in his position, the official concerned may be:

- (a) Suspended pending his confirmation or appointment to another post;
- (b) Transferred;
- (c) Demoted;
- (d) Offered early retirement;
- (e) Dismissed.

In the case of judges, the decision shall be taken in the light of the relevant provisions of principle 35.

VI. INTERPRETATIVE PROVISION

The definition of the "reference period" may not be interpreted as exonerating or having exonerated States from applying and observing these principles during the said period.



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Sub-Commission on Prevention of
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Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:
QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

Ninth annual report and list of States which, since 1 January 1985, have
proclaimed, extended or terminated a state of emergency, presented by
Mr. Leandro Despouy, Special Rapporteur appointed pursuant to Economic
and Social Council resolution 1985/37

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Introduction

1. By resolution 10 (XXX) of 31 August 1977, the Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed its concern at the manner in which certain countries applied the provisions relating to situations known as states of siege or emergency. Convinced that a connection existed between such application and the situation regarding human rights in the said countries, it considered that a comprehensive study of the implications for human rights of recent developments in that sphere would be conducive to the achievement of the aims pursued by the United Nations in the field of human rights. The comprehensive study was presented by Ms. Nicole Questiaux at the thirty-fifth session of the Sub-Commission (E/CN.4/Sub.2/1982/15).
2. In resolution 1983/18, the Commission on Human Rights requested the Sub-Commission to propose for the Commission's consideration measures designed to ensure the respect throughout the world of human rights and fundamental freedoms in situations where states of siege or emergency existed, especially respect for those rights referred to in article 4, paragraph 2, of the International Covenant on Civil and Political Rights.
3. By resolution 1983/30, the Sub-Commission decided to include in its agenda an item entitled "Implementation of the right of derogation provided for under article 4 of the International Covenant on Civil and Political Rights and violations of human rights". Subsequently, by its resolution 1987/25, the Sub-Commission decided to examine this issue, as a matter of high priority, under the agenda item "The administration of justice and the human rights of detainees: (b) Question of human rights and states of emergency".
4. At the Sub-Commission's request, the Economic and Social Council, by resolution 1985/37, authorized the Sub-Commission to appoint a special rapporteur to carry out the work referred to in Commission resolution 1983/18 and Sub-Commission resolution 1983/30.
5. The mandate of the Special Rapporteur for that task, Mr. Leandro Despouy, as laid down in these resolutions as well as in subsequent Sub-Commission resolutions 1985/32, 1987/25, 1988/24, 1989/28, 1990/19, 1991/18, 1992/22, 1993/28, 1994/36 and 1995/33 includes the following main tasks: (a) to draw up and update annually a list of countries which proclaim or terminate a state of emergency; (b) to examine, in annual reports, questions of compliance by States with internal and international rules guaranteeing the legality of the introduction of a state of emergency; (c) to study the impact of emergency measures on human rights; (d) to recommend concrete measures with a view to guaranteeing respect for human rights in situations of state of siege or emergency.
6. The Special Rapporteur has presented to the Sub-Commission and to the Commission on Human Rights an explanatory paper (E/CN.4/Sub.2/1985/19) and his first, second, third, fourth, fifth, sixth, seventh and eighth reports and lists of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, including the revised and updated

versions of those reports (E/CN.4/Sub.2/1987/19/Rev.1 and Add.1-2;
E/CN.4/Sub.2/1988/18/Rev.1; E/CN.4/Sub.2/1989/30/Rev.2;
E/CN.4/Sub.2/1991/28/Rev.1; E/CN.4/Sub.2/1992/23/Rev.1;
E/CN.4/Sub.2/1993/23/Rev.1; E/CN.4/Sub.2/1994/23 and Corr.1 and Add.1;
E/CN.4/Sub.2/1995/20 and Corr.1 and Add.1).

7. Pursuant to the request contained in decision 1991/262 of the Economic and Social Council, the Special Rapporteur presented to the Sub-Commission and to the Commission on Human Rights the draft guidelines for the development of legislation on states of emergency, which were continued in annex I to his fourth annual report (E/CN.4/Sub.2/1991/28/Rev.1).

8. By its resolution 1996/36, the Commission on Human Rights, taking note of Sub-Commission resolution 1995/33, recommended to the Economic and Social Council to approve the Sub-Commission's request to the Special Rapporteur on human rights and states of emergency, Mr. Leandro Despouy, to fulfil his mandate, in particular relating to (a) the updating of the lists of States which have proclaimed, extended or terminated a state of emergency; (b) the submission of conclusions and recommendations concerning non-derogable rights in states or situations of emergency; and (c) the continuation of his consultations on the establishment of a database on states of emergency and related human rights questions.

9. The present ninth annual report has been prepared in pursuance of that as well as of other pertinent resolutions and decisions of the Commission on Human Rights and the Sub-Commission.

I. HABEAS CORPUS AS A NON-DEROGABLE REMEDY TO GUARANTEE
THE PROTECTION OF NON-DEROGABLE HUMAN RIGHTS

10. As will be recalled, on a proposal by its Chairman, Mr. Louis Joinet, the sessional working group on the administration of justice and the question of compensation requested the Special Rapporteur on human rights and states of emergency to prepare, for the forty-eighth session of the Sub-Commission, a working paper on habeas corpus as a non-derogable right and as one of the requirements for the right to a fair trial. ¹/ This document is submitted for the consideration of the working group and the Sub-Commission in compliance with that request.

Statement of the issue

11. It can easily be shown that nearly all the world's systems of law, both internal and international, provide a series of procedural remedies to protect the exercise of individual and public freedoms and to guarantee accused persons a fair trial. This is true of article 9 of the International Covenant on Civil and Political Rights, which in a similar way to the European Convention and the American Convention on Human Rights provides, *inter alia*, for the right of anyone who is arrested to be informed of the reasons for his arrest, to be brought promptly before a judge and to be released without delay if the detention is not lawful. In addition, article 14 of the Covenant, article 6 of the European Convention and article 8 of the American Convention provide for a series of rights serving to guarantee a fair trial.

12. However, no international instrument includes the remedy of habeas corpus among the rights or guarantees which cannot be suspended during officially declared states of emergency. The issue might therefore be stated as follows: are non-derogable or inalienable rights only those rights which are classified as such in the international treaties? 2/ Evidently, as we shall see, the answer must be no, since doctrine and jurisprudence are quite consistent in this respect.

Non-derogability of habeas corpus

13. The reasoning behind the Special Rapporteur's inclusion of this remedy as a guarantee which is not derogable at any time or under any circumstance is based on a number of considerations, of which the most important are outlined below.

14. First, the quality of non-derogability derives from the fact that habeas corpus is one of the "judicial guarantees essential" for the protection of certain non-derogable rights. This, in essence, has been the reasoning of the Inter-American Court of Human Rights and of all the organs of the inter-American system, which consider the remedy as a guarantee that is inherent in the rule of law.

15. In 1987, the Inter-American Court of Human Rights adopted two Advisory Opinions which, together with certain decisions of the European Commission and Court of Human Rights, constitute landmarks in the international jurisprudence on derogation. In the first of these Opinions, entitled "Habeas Corpus in Emergency Situations", the Court affirmed that, although the original purpose of habeas corpus was to protect personal liberty, a right which is subject to derogation, it has also evolved as the main judicial instrument for the protection of prisoners against torture and extra-legal execution. Being essential for the protection of the rights to life and physical integrity, which are non-derogable, the right to habeas corpus becomes non-derogable itself, since it comes within the frame of the "essential" judicial guarantees provided for in article 27, paragraph 2, which expressly prohibits "any suspension ... of the judicial guarantees essential for the protection of [non-derogable] rights".

16. The Inter-American Court goes even further in its Advisory Opinion entitled "Judicial Guarantees in States of Exception", affirming that as States are required to make judicial remedies available even in cases where derogation from some rights may be justified, the guarantees of due process must be respected "in the main".

17. Another important element for this characterization comes from State practice, since experience shows that Governments generally understand that habeas corpus should not be limited in emergency situations. This was basically the position of the Human Rights Committee in response to a Sub-Commission resolution favouring the elaboration of a draft protocol designed to prohibit any derogation from articles 9 (3) and (4) and 14 of the International Covenant on Civil and Political Rights. Explaining its opposition to such an initiative, the Committee said that it was "satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency". Now the Committee

adopted the same position in a comment following the consideration of the report of a State party, where it is said that measures taken by a Government to combat terrorism must not impair the exercise of the fundamental rights set forth in the Covenant, particularly in articles 6, 7 and 9. With regard to article 14, the Committee indicated that it did not feel that all the provisions of that article could be considered as non-derogable.

18. On the question of procedural guarantees, we shall refer instead to a recent comment on article 7, where the Committee says that the article obliges States parties to disallow in evidence any statement or confession obtained through torture or other ill-treatment. As article 7 covers rights from which there can be no derogation, the Committee's comment adds a procedural guarantee, namely the prohibition of any evidence obtained by torture, to the list of rights which cannot be derogated from in any case. Furthermore, the Committee complements the protection against torture and ill-treatment with the right of any detained person to be assisted promptly by a lawyer; and this, by enabling the person who is detained to protect his physical integrity and prepare his defence, has the effect of prohibiting any derogation from another element of the right to a fair trial, as set forth in article 14, paragraph 3 (b).

19. Although these comments address the issue of derogations only indirectly, they do seem to indicate that the Committee is moving towards the position taken by the Inter-American Court in its Advisory Opinions OC-8/87 and OC-9/87, which is to say that the remedy of habeas corpus and most of the procedural guarantees provided for in article 14 of the Covenant are not subject to derogation in time of emergency. By clearly defining and substantiating its position, the Human Rights Committee would make an invaluable contribution to international law on this crucial question. 3/

20. At the same time, any suspension must be in keeping with the general principles that govern derogations, such as non-discrimination or the principle of necessity. If, then, we examine the precedents and jurisprudence established by the monitoring bodies in this matter (especially by the European Court and Commission in the Lawless and Greek cases), we realize just how impossible it would actually be in a particular situation to demonstrate or justify the need to suspend habeas corpus as a means of resolving the crisis.

21. In this regard, it is interesting to study the new treatment of habeas corpus in countries where its unlawful suspension led at one time to serious and frequent violations of human rights. Thus, the new habeas corpus law of Argentina, for example, views the remedy as a guarantee serving to protect individual and public freedoms as well as the physical and mental integrity of persons. Moreover, it not only prohibits the suspension of habeas corpus in a state of emergency, but also explicitly provides for a judicial review of the lawfulness of the state of emergency and of any measures that might be taken.

22. Because of the complementary and non-exclusive character of the standards of protection in international law, both the Covenant and the American and European Conventions contain saving clauses whereby the right of derogation

recognized by these instruments as belonging to States parties in exceptional circumstances does not extend to "their other obligations under international law". Therefore, all the non-derogable procedural norms provided for or contained in the various branches of international law remain applicable. Of this set of norms, the most important are those contained in the four Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977. Protocol I and the four Conventions contain rules of humanitarian law applicable to international armed conflicts, while Protocol II and common article 3 of the four Conventions refer to non-international armed conflicts (although jurisprudence has extended the latter's applicability to conflicts of an international character).

23. In regard to protection, because of their non-derogable character, article 75 of Protocol I and article 4 of Protocol II, which provide for so-called "fundamental guarantees" (article 6 should also be noted), seem pertinent to us and, as can be seen from the travaux préparatoires, were inspired by articles 14 and 15 of the International Covenant on Civil and Political Rights.

24. Common article 3 of the four Geneva Conventions also establishes "fundamental guarantees" during internal armed conflicts, although the International Court of Justice in its judgment on the military and paramilitary activities in Nicaragua deemed that it should also apply to conflicts of an international character. Most importantly, however, this article speaks of "judicial guarantees which are recognized as indispensable by civilized peoples". It should be noted that common article 3, which in practice constitutes a mini-convention, is vested with the character of jus cogens in most doctrine and, as the eminent Uruguayan jurist Jiménez de Aréchaga has said, "guarantees which are non-derogable in the case of civil war should be considered as such with even more reason when the threat to the life of the nation is less grave".

25. It should likewise be noted that international humanitarian law contains only non-derogable rights since, unlike international human rights law, it does not provide for any mechanism that would permit States to limit unilaterally the extent of the obligations imposed by a treaty of a humanitarian character.

26. International humanitarian law and international human rights law are in reality two branches of positive law which, while pursuing a common goal of protecting the human person, each have their own dynamics. This can be seen, in particular, in situations of armed conflict, where the two normative systems apply concurrently, but with some differences that are discernible especially in the range of the beneficiaries and, when only the hard core of international human rights law is applicable, in the content of the protection flowing from one or the other of these two bodies of rules. 4/

27. The fact that humanitarian law applies solely in situations of armed conflict not only points to one of its essential differences as compared with international human rights law, but also explains the value of humanitarian law for determining the hard core of international human rights law.

28. Since an armed conflict is undeniably one of the situations which may lead States to make use of the power to suspend the norms of some international human rights treaties, humanitarian law constitutes a reference for the determination of non-derogable human rights.

29. This complementarity which operates between the various norms of international law and which enhances the protection of the human being in situations of crisis is also, quite logically, supported by customary international law. 5/

30. It is important to note that because of the indivisible and interdependent character of human rights, the limitations on the "power of suspension" apply not only to the procedural guarantees which are essential for the exercise of non-derogable rights, but also to any substantive right which is otherwise not non-derogable but whose temporary derogation may imply restrictions on rights that are non-derogable. This point is illustrated in the views of the Human Rights Committee concerning communication No. 328/1988 (*Zelaya v. Nicaragua*), adopted on 20 July 1994, in which the Committee determined that there had been violations by Nicaragua of articles 7, 9, 10 and 14 of the Covenant. In this precedent, as well as in the views reflected in the confidential summary records of the discussions relating to the communications submitted under the Optional Protocol, the members of the Committee consider as a general rule that a State should not be able to derogate from those judicial guarantees which are essential for the realization of non-derogable rights, such as the right to life and the right not to be subjected to torture. 6/

31. Lastly, in the opinion of the Special Rapporteur, the clearest and most cogent argument for the non-derogability of habeas corpus comes from the provisions of the Covenant itself, and in particular from article 2, whereby each State party undertakes to respect and to ensure to all individuals within its territory the rights recognized in the Covenant and to adopt such measures as may be necessary to give effect to those rights. Above all, paragraph 3 of that article guarantees to all persons the opportunity to claim an effective remedy if any of the rights recognized in the Covenant is violated. Since the right to life and the right to physical integrity, for example, are rights whose protection must be guaranteed at any time and in any circumstance, it is clear that the effective remedy referred to in this article is bound also to be non-derogable.

II. LIST OF STATES WHICH, SINCE 1 JANUARY 1985, HAVE PROCLAIMED, EXTENDED OR TERMINATED A STATE OF EMERGENCY

32. By drawing up this list of States which have proclaimed, extended or terminated a state of emergency, the Special Rapporteur has endeavoured, within the limits of the information available to him, to give the Sub-Commission and the Commission as complete a picture as possible of the world situation regarding states of emergency since 1 January 1985. The present composite list contains a summary of information which had already been included in his eight previous reports as well as new information received from Governments, United Nations bodies and other intergovernmental organizations, communicated by non-governmental organizations in consultative

status with the Economic and Social Council and published in the press since November 1995, when his eighth report and the addendum thereto was issued.

33. The purpose of this recapitulation is to give an overall view of the world situation regarding states of emergency and at the same time to improve the list prepared by the Special Rapporteur. To that end, it is essential to benefit once more from the cooperation of the Governments concerned, the non-governmental organizations and all those in a position to supply reliable information capable of correcting errors or remedying gaps which may exist in that list.

34. The Special Rapporteur periodically solicits information from all Governments, competent United Nations organs, specialized agencies and other intergovernmental and non-governmental organizations concerned. A list of replies and other communications received is contained in the annex.

35. Whenever the Special Rapporteur has learned, generally through the international press, of the adoption by a Government of emergency measures involving prima facie restriction of the exercise of human rights (partial suspension of the Constitution, curfew, etc.) he has immediately addressed that Government, through the Secretary-General, requesting specific and detailed information on the nature of the measures in force, the legal basis for them and, above all, the effect they are having or have had on human rights in general.

36. In drawing up this list, the Special Rapporteur also took into account those countries which have and apply ordinary legislation empowering the executive to adopt emergency measures (such as administrative or ministerial detention for long periods) without the need for official proclamation of a state of emergency in order to do so.

37. According to the information available to the Special Rapporteur, in the following 87 States and territories, since 1 January 1985, measures have been taken which constituted the proclamation, extension, maintenance or termination of emergency regimes in various forms:

Afghanistan: State of emergency proclaimed on 19 February 1989. Lifted on 28 May 1990.

Sources: Interim reports on the situation of human rights in Afghanistan, prepared by Mr. F. Ermacora, Special Rapporteur of the Commission on Human Rights (A/44/669, para. 20 (e), and A/45/664, para. 36).

Algeria:* State of siege proclaimed on 6 October 1988. Terminated on 12 October 1988.

State of siege decreed on 4 June 1991 for a period of four months. Terminated on 29 September 1991.

* An asterisk accompanying the name of a country or a territory indicates that the state of emergency there is still in force.

Sources: Letter from the Government dated 28 April 1989; Notifications of the Government to the United Nations Secretary-General dated 19 June and 3 October 1991.

State of emergency proclaimed on 9 February 1992 for a duration of 12 months. Indefinite overnight curfew decreed on 2 December 1992.

On 7 February 1993, the state of emergency was extended indefinitely.

Sources: Notification of the Government to the United Nations Secretary-General dated 13 February 1992; information published in the press and received from non-governmental organizations.

Argentina:

State of siege proclaimed on 25 October 1985 for 60 days. Terminated on 7 December 1985.

Sources: Letter from the Government dated 12 August 1987.

State of siege proclaimed on 29 May 1989 for 30 days. Lifted on 27 June 1989.

Sources: Notifications of the Government to the United Nations Secretary-General dated 7 June 1989 and 11 July 1989.

Armenia:

On 15 January 1990, a state of emergency was introduced in the Gorissa region of the Armenian SSR.

Sources: Notification of the Government of the Soviet Union to the United Nations Secretary-General dated 16 January 1990.

On 29 August 1990, a state of emergency was declared and a curfew introduced throughout the Republic. Lifted on 16 August 1991.

On 16 December 1991, a state of emergency was declared and a curfew introduced in the Meghri region of Armenia for a period of three months.

On 19 June 1992, the state of emergency in the Meghri and Kapan regions of southern Armenia was reinstated for another three months.

Sources: Letter from the Government dated 10 July 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information received from a non-governmental organization and published in the press.

In February 1993, a state of emergency was introduced in Armavir district of Armenia for a period of one month.

Sources: Information published in the press.

Azerbaijan:*

State of emergency imposed in the Nagorno-Karabakh autonomous region and Agdam district of the Azerbaijan SSR as of 21 September 1988. On 15 January 1990, a state of emergency was introduced in the territory of the Nagorno-Karabakh autonomous region, the regions of the Azerbaijan SSR adjacent thereto, and the border zone along the State frontier with the Soviet Union in the territory of the Azerbaijan SSR.

On 20 January 1990, a state of emergency was declared in the city of Baku. Lifted in August 1991.

In June 1990, a state of emergency was introduced in the Azerbaijan SSR along its border with the Armenian SSR.

Sources: Notifications of the Government of the Soviet Union to the United Nations Secretary-General dated 13 October 1988, 15 and 29 January 1990; information published in the press.

On 14 May 1992, a state of emergency was decreed for a period of two months and a curfew introduced in the city of Baku.

Sources: Information published in the press. In a letter dated 19 May 1992, addressed to the Government of the Azerbaijan Republic, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

In March 1993, a state of emergency was declared in three districts of the Republic for a period of one month.

On 3 April 1993, a state of emergency was introduced in the whole territory of the Republic for a period of 60 days.

On 9 April 1993, a curfew was imposed in Baku and several other cities and districts.

On 2 August 1993, the state of emergency was extended for another 60 days.

On 22 September 1993, the state of emergency was lifted throughout the country.

Sources: Notifications of the Government to the United Nations Secretary-General dated 16 April and 13 August 1993; communication of the Government to the secretariat of the Conference on Security and Cooperation in

Europe dated 11 August 1993; report of the Azerbaijan to the Human Rights Committee (CCPR/C/81/Add.2, paras. 22-24); information published in the press.

On 4 October 1994, a state of emergency was introduced in the city of Baku for a period of 60 days. Subsequently extended (most recently from 3 April 1995 for another 60 days).

Sources: Notification of the Government to the Secretary-General of the United Nations dated 5 October and 13 December 1994 and 8 April 1995.

On 11 October 1994, a state of emergency was introduced in the town of Guyandja. On 11 December 1994, the state of emergency was extended for another 60 days. Terminated on 11 April 1995.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 21 October and 17 December 1994 and 17 April 1995.

Bangladesh:

Martial law proclaimed on 24 March 1982. Terminated on 10 November 1986.

State of emergency declared on 27 November 1990. Lifted on 6 December 1990.

Sources: Letters from the Government dated 22 July 1987 and 1 April 1993.

Bolivia:

State of emergency proclaimed on 18 September 1985. Terminated on 19 December 1985.

State of emergency proclaimed on 27 August 1986. Terminated on 27 November 1986.

State of emergency proclaimed on 15 November 1989. Terminated on 15 February 1990.

Sources: Notifications of the Government to the United Nations Secretary-General dated 27 September and 29 October 1985, 6 January, 28 August and 28 November 1986, 16 November and 8 December 1989 and 18 March 1990.

State of emergency decreed on 18 April 1995 in the whole territory of the country; subsequently extended until 15 October 1995. Terminated on 16 October 1995.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 19 April, 27 July and 12 December 1995; letter from the Government dated 5 May 1995, received in reply to the Special Rapporteur's request for information of 24 April 1995.

Bosnia and
Herzegovina:*

Admitted to the United Nations on 22 May 1992, this newly emerged State found itself in a de facto state of emergency at the moment of its transition to independence. The Special Rapporteur awaits more precise information to be submitted by the Government.

Sources: Periodic reports on the situation of human rights in the territory of the former Yugoslavia submitted by the Special Rapporteurs of the Commission on Human Rights, Mr. T. Mazowiecki (latest: E/CN.4/1995/57, paras. 5-50; E/CN.4/1996/6, paras. 65-121) and Ms. E. Rehn (E/CN.4/1996/63, paras. 7-61); information published in the press.

Brunei
Darussalam:*

State of emergency proclaimed on 12 December 1962. Still in force.

Sources: Letters from the Government, the latest dated 4 April 1991.

Burkina Faso:

Succession of emergency regimes and situations comparable to states of emergency since November 1980 and until June 1991.

Sources: Letters from the Government dated 30 April 1991 and 10 June 1993.

Burundi:*

State of emergency proclaimed and a curfew imposed on 21 October 1993. The curfew was lifted on 26 October 1993.

Sources: Report of the Representative of the Secretary-General, Mr. F.M. Deng, on internally displaced persons (E/CN.4/1995/50/Add.2, para. 31); information published in the press. In a letter dated 25 October 1993, addressed to the Government of Burundi, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Cameroon:

State of emergency proclaimed on 18 April 1984. Lifted on 19 December 1991.

Sources: Information received from non-governmental organizations.

A state of emergency was in force from 27 October to 29 December 1992 in the North-West province of the country.

Sources: Letter from the Government dated 29 December 1992; Report of the Human Rights Committee (A/49/40, para. 189).

Canada:

State of emergency declared on 23 July 1989 throughout the province of Manitoba. Terminated on 4 August 1989.

Source: Letter from the Government dated 24 August 1989.

Chad:

No state of emergency has been formally proclaimed since 1 January 1985. However, a decree dated 7 April 1988 restricted for one week the realization of some human rights and fundamental freedoms.

Sources: Letters from the Government dated 20 July 1988 and 5 February 1991.

Curfew imposed in N'Djamena on 9 August 1993. On 22 October 1993, a curfew was introduced in the whole territory of the country. Lifted on 23 October 1993.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Chile:

Proclamation of state of siege (from 7 November 1984 to 17 June 1985 and from 8 September 1986 to 5 January 1987), state of emergency (from 24 March 1984 to 27 August 1988) and state of danger of disturbance of internal peace (from 11 March 1981 to 27 August 1988).

Sources: Notifications of the Government to the United Nations Secretary-General dated, inter alia, 17 June 1985, 22 September 1986, 20 January 1987 and 31 August 1988; letters from the Government dated 10 August 1989, 21 February 1991 and 28 April 1993.

China:

Martial law imposed in Lhasa, Tibet, on 8 March 1989. Lifted on 1 May 1990.

Martial law imposed in Beijing on 20 May 1989. Lifted on 11 January 1990.

Sources: Letters from the Government dated 8 May and 15 August 1989. Letter dated 12 January 1990 from the Permanent Representative of China (reproduced in E/CN.4/1990/55); information received from non-governmental organizations and other information published in the press.

Colombia:*

State of siege proclaimed on 1 May 1984. Lifted on 7 July 1991.

State of internal disturbance was decreed from 10 to 16 July 1992 and from 8 November 1992 to 6 February 1993. On 5 February 1993, additional measures relating to the state of internal disturbance were decreed and it was extended until 7 May 1993.

State of internal disturbance was again decreed from 1 to 10 May 1994 throughout the national territory. Subsequently extended for two months. State of internal disturbance

decreed on 16 August 1995 for a period of 90 days. On 2 November 1995, the state of internal disturbance was again proclaimed in the whole national territory.

Sources: Notifications of the Government to the United Nations Secretary-General dated 7 May and 11 December 1984, 9 August 1991 and 16 July and 10 November 1992, 5 March 1993 and 6 and 27 May 1994; letters from the Government, latest dated 27 January and 27 April 1993, 4 September 1995 and 22 February 1996; statement made by the observer for Colombia to the Sub-Commission at its forty-seventh session on 17 August 1995; information published in the press and received from non-governmental organizations.

Congo: State of emergency was in force from 16 July to 15 August 1993. Curfews were imposed in the cities of Brazzaville and Pointe-Noire at the beginning of July 1993.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Croatia:* Admitted to the United Nations on 22 May 1992, this newly emerged State found itself in a de facto state of emergency at the moment of its transition to independence. The Special Rapporteur awaits more precise information to be submitted by the Government.

Sources: Periodic reports on the situation of human rights in the territory of the former Yugoslavia submitted by the Special Rapporteurs of the Commission on Human Rights, Mr. T. Mazowiecki (latest: E/CN.4/1995/57, paras. 51-79; E/CN.4/1996/6, paras. 6-64) and Ms. E. Rehn (E/CN.4/1996/63, paras. 61-114); information published in the press.

Djibouti: On 16 November 1991, a curfew was introduced in the district of Obock.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Ecuador: Repeated proclamation of state of national emergency (14 to 17 March 1986, 28 to 30 October 1988, 31 May to 1 June 1988 and 27 September to 13 October 1989).

Sources: Letters from the Government (latest dated 12 January 1990); notifications of the Government to the United Nations Secretary-General dated 14 and 18 March 1986, 28 and 30 October 1987, 1 and 2 June 1988 and 2 August 1989.

Egypt:*

State of emergency has been in force since 6 October 1981. It was extended for a three-year period from 1 May 1988 to 31 May 1991.

Sources: Letter from the Government dated 28 March 1991; information received from non-governmental organizations.

On 1 June 1991, martial law was extended for another three years.

Sources: Report of the Human Rights Committee (A/48/40, paras. 671, 690 and 704); information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

El Salvador:

Suspension of certain constitutional guarantees since 6 March 1980. Successive extensions of martial law in 1984-1985. Termination of state of emergency on 12 January 1987. Further suspension of constitutional guarantees on 12 November 1989 for 30 days, subsequently extended until mid-April 1990.

Sources: Notifications of the Government to the United Nations Secretary-General (latest dated 31 July 1985, 13 November 1989 and 5 January 1990); letters from the Government, latest dated 18 August 1989; information received from non-governmental organizations.

Ethiopia:

The existence of a de facto state of emergency for quite some time has been reported. From May 1988, state of emergency in force in the regions of Tigray and Eritrea. Terminated in May 1991.

In May 1991, a curfew was introduced in Addis Ababa. Lifted on 31 May 1992.

Sources: Statement by the observer for Ethiopia at the forty-fourth session of the Sub-Commission, on 19 August 1992; information received from non-governmental organizations and published in the press.

Fiji:

State of public emergency proclaimed on 14 May 1987. Terminated on 5 December 1987.

Sources: Letters from the Government dated 6 November and 7 December 1989.

France:

State of emergency proclaimed in New Caledonia and dependencies on 12 January 1985. Extended until 30 June 1985.

State of emergency proclaimed in Wallis and Futuna on 29 October 1986. Terminated on 30 October 1986.

Sources: Notification of the Government to the Secretary-General of the Council of Europe; letter from the Government dated 9 July 1987.

Gabon: State of siege introduced in the province of Port-Gentil. Curfew in force since May 1990. Terminated in August 1990.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Gambia: State of emergency proclaimed on 2 August 1981. Terminated on 8 February 1985.

Sources: Information received from non-governmental organizations.

Georgia:* On 18 July 1989, a "special regime of conduct for citizens" was introduced in the Abkhaz autonomous republic.

On 12 December 1990, a state of emergency was introduced and subsequently extended in Tskhinvali and Dzhavski district (South Ossetia). Terminated on 26 November 1991.

In September 1991, a state of emergency was introduced in Tbilisi, the capital city of Georgia.

In January 1992, a state of emergency was declared and a curfew introduced in Kutaisi and several districts of western Georgia.

On 6 July 1993, martial law was imposed in Abkhazia.

In September 1993, a state of emergency was introduced in the whole territory of the Republic for a period of two months and subsequently extended.

Sources: Information received from non-governmental organizations and published in the press. In two letters dated 19 May 1992 and 11 October 1993, the Special Rapporteur requested the Government of Georgia to provide information regarding the emergency measures taken and their impact on human rights.

Guatemala: On 25 May 1993, the suspension of certain constitutional guarantees was decreed, which was enforced for several days.

Sources: Letter from the Government dated 30 June 1993, received in reply to Special Rapporteur's request for

information of 17 June 1993; report on the situation of human rights in Guatemala, prepared by Ms. Monica Pinto, Independent Expert of the Commission on Human Rights (E/CN.4/1994/10, paras. 16-21); information published in the press.

Guyana: State of emergency declared on 28 November 1991.

Sources: Letter from the Government dated 24 March 1993.

Haiti: State of siege proclaimed on 29 January 1986. Terminated on 14 February 1986.

Sources: Letters from the Government dated 10 June 1987 and 16 March 1989.

State of siege introduced on 20 January 1990. Lifted on 30 January 1990.

Sources: Commission on Human Rights resolution 1990/56 of 7 March 1990; reports on human rights situation in Haiti prepared by Mr. P. Texier, Independent Expert (E/CN.4/1990/44/Add.1, paras. 1 and 20; E/CN.4/1991/33, paras. 3, 11 and 125).

In September 1991, a curfew was introduced in Port-au-Prince. In a letter dated 22 October 1991 addressed to the Government of Haiti, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Not having received a reply from the authorities in the capital and possessing reliable information regarding the de facto state of emergency which existed in Haiti, the Special Rapporteur undertook a study on this issue (see chapter III of his sixth report, E/CN.4/Sub.2/1993/23/Rev.1).

After the return to Haiti, in October 1994, of its constitutional President, the de facto state of emergency in the country ceased to exist.

Honduras: State of emergency proclaimed on 8 April 1988. Terminated on 13 April 1988.

Sources: Information received from non-governmental organizations and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

India: The Special Rapporteur awaits more precise information from the Government concerning the measures taken in Kashmir, Punjab, areas in the north-east and in Andhra Pradesh, where,

according to non-governmental sources, certain constitutional guarantees were said to have been suspended under special laws which in effect established a continuing state of emergency.

On 7 December 1992, an indefinite curfew was imposed in parts of Old Delhi. Curfews were also ordered in some other large cities.

On 2 August 1993, a curfew was imposed in the town of Srinagar, Kashmir.

On 11 May 1995, a curfew was again introduced in Srinagar.

Sources: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. B.W. Ndiaye (E/CN.4/1993/46, paras. 333-334); information received from non-governmental organizations and published in the press.

Iraq:

The Special Rapporteur was awaiting information from the Government concerning the emergency measures taken during the armed conflict of 1991 and afterwards, as well as in connection with the events that have taken place in the Kurdish provinces. In a letter dated 4 March 1993, the Government of Iraq stated, inter alia, that:

"Despite the exceptional situation it has faced as a result of the aggression perpetrated against it by some 30 countries and in spite of the ensuing unrest, Iraq has neither proclaimed a state of emergency nor restricted the implementation of the articles of the Constitution or the laws, nor adopted measures which might undermine respect for human rights in general."

The Special Rapporteur intends to hold further consultations with the Government of Iraq. He will also consult the Special Rapporteur on the situation of human rights in Iraq in order to obtain a current evaluation by that independent expert of the situation in this country.

Sources: Letters from the Government dated 23 June 1987 and 4 March 1993; note verbale dated 3 July 1991 from the Permanent Mission of Iraq to the Centre for Human Rights (reproduced in E/CN.4/Sub.2/1991/51); reports on the situation of human rights in Iraq, prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights (A/46/647, para. 60; E/CN.4/1992/31, paras. 22-39 and 151; E/CN.4/1994/58, para. 15; E/CN.4/1995/56, para. 17; E/CN.4/1996/61, para. 17).

Ireland:

State of emergency was in force from 1 September 1976 until February 1995.

Sources: Letter from the Government dated 2 June 1995; report of Ireland to the Human Rights Committee (CCPR/C/68/Add.3, paras. 29-31); report of the Human Rights Committee (A/48/40, paras. 561, 574, 582-583, 603 and 611); information received from a non-governmental organization.

Israel:* State of emergency in force since May 1948.

Sources: Notification of the Government received by the Secretary-General on 3 October 1991; letter from the Government dated 28 May 1991.

Territories occupied by Israel:* Emergency legislation in force.

Curfews imposed in the Gaza Strip and the West Bank since December 1992.

Sources: United Nations reports; information received from intergovernmental and non-governmental organizations and published in the press. The Special Rapporteur awaits more detailed information to be submitted by the Government of Israel regarding the emergency measures taken and their impact on human rights.

Jordan: Martial law declared on 5 June 1967.

The Government's decision to repeal martial law was endorsed by royal decree of 30 March 1992.

Sources: Letter from the Government dated 12 July 1993; reports of Jordan to the Human Rights Committee (CCPR/C/1/Add.55 and 56, CCPR/C/46/Add.4 and CCPR/C/76/Add.1); reports of the Human Rights Committee (A/46/40, para. 578; A/49/40, para. 231); information received from non-governmental organizations.

Kazakhstan: On 19 June 1989, a curfew was introduced in the town of Novy Uzen, Guriev district. Lifted on 24 July 1989.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Kenya: According to a non-governmental source, a long-term state of emergency has been in effect in the north-eastern part of the country until the beginning of 1992. The Special Rapporteur awaits more precise information to be submitted by the Government, especially with regard to the emergency-type detention law currently in force.

Kuwait: On 26 February 1991, martial law was declared for a three-month period. Subsequently extended until 26 June 1991.

Sources: Letter from the Government dated 14 September 1993; information received from non-governmental organizations and published in the press.

Kyrgyzstan:*

From 7 June to 21 November 1990, a state of emergency was in force in the capital, Frunze (now renamed Bishkek). On 4 and 7 June 1990, a state of emergency was decreed and a curfew imposed in Osh town and in Osh region. Still in force. Partially lifted on 14 September 1991. In January 1993, a special regime of entry and exit was introduced in Osh region.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Lesotho:

State of emergency declared on 25 February 1988. Reinstated on 2 May 1988. Lifted in early 1990.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

Liberia:*

Suspension of certain constitutional guarantees since July 1990. Curfew enforced in the capital.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Madagascar:

State of emergency declared on 23 July 1991 and subsequently extended. Curfew enforced in the capital.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Malawi:

Emergency legislation in force since 1965 which expressly provides for preventive detention.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

Malaysia:

Four states of emergency proclaimed since independence were never revoked. The latest nationwide state of emergency was declared on 15 May 1969. Emergency legislation currently in force which expressly provides for preventive detention.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Mali:*

State of emergency declared on 22 March 1991.

Sources: Information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Mauritania:

A curfew was introduced in rural areas of the south. A de facto state of emergency has been reported to exist in the Senegal river valley. In October 1992, a curfew was enforced in the capital.

Sources: Information published in the press and received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Moldova:

From 26 October to 6 December 1990, a state of emergency was in force in several southern districts.

On 16 March 1992, a "special situation" regime was introduced on the left bank of Dnestr river. Lifted in September 1992. Curfew still in force. The "special situation" regime was again introduced in this area from 19 January to 1 March 1994.

On 28 March 1992, a state of emergency was decreed in the whole territory of the Republic. Lifted on 19 August 1992.

Sources: Letter from the Government dated 25 June 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information received from non-governmental organizations and published in the press.

Myanmar:*

State of emergency proclaimed at Prome on 22 July 1988 and in the Yangon region on 3 August 1988. Terminated on 24 August 1988.

Martial law introduced on 18 September 1988. By end of May 1990, it was lifted in 102 townships.

The curfew imposed on 10 October 1990 was lifted on 10 September 1992.

On 26 September 1992, two martial law orders dated 17 and 18 July 1989 were revoked.

In a letter dated 4 August 1994, the Government stated that "the state of emergency is no longer ... in force in Myanmar since 24 August 1988". It further indicated that "the State and Law Order Restoration Council Order No. 12/92 issued on 26 September 1992 revoked the executive and judicial powers conferred upon the three Military Commanders and at the same time abolished all the Military Tribunals".

The Special Rapporteur has noted that the Commission on Human Rights, in its resolution 1996/80 of 23 April 1996, gravely concerned at "the existence of important restrictions on the exercise of fundamental freedoms, including the freedom of expression and association", encouraged the Government of Myanmar "to continue to lift the remaining emergency measures". (para. 15).

Sources: Letters from the Government dated 29 May and 24 August 1987, 16 May and 17 August 1989, 26 January, 21 March, 7 May and 14 June 1990, 4 March 1991, 18 August, 28 September, 7 and 19 October 1992, 22 January 1993 and 4 August 1994; reports on the situation of human rights in Myanmar, prepared by Mr. Y. Yokota, Special Rapporteur of the Commission on Human Rights (E/CN.4/1993/37, para. 242 (d); E/CN.4/1995/65, paras. 8-9; E/CN.4/1996/65, para. 174); information received from non-governmental organizations.

Nicaragua:

State of emergency was in force, with brief interruptions, from 15 March 1982 to 19 January 1988, and from 20 October to 15 November 1988.

From 18 May to 17 June 1993, a partial suspension of certain constitutional rights and guarantees was decreed in some parts of the country.

Sources: Notifications of the Government to the Secretary-General of the United Nations, latest dated 4 February, 21 October and 16 November 1988 and 19 May and 11 August 1993.

Niger:*

A state of emergency has been in force in the north of the country since 1992.

Sources: Information received from a non-governmental organization.

State of emergency proclaimed in February 1996.

Sources: Information published in the press. In a letter dated 15 February 1996, the Special Rapporteur requested the Government of Niger to provide information regarding the emergency measures taken and their impact on human rights.

Nigeria:

State of emergency proclaimed on 31 December 1983.

In October 1991, an indefinite night-time curfew was imposed in the State of Kano.

On 18 November 1993, the Parliament was dissolved and certain constitutional guarantees suspended.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Pakistan: Martial law was in force from 5 July 1977 to 30 December 1985.

State of emergency proclaimed on 17 August 1988. Terminated on 1 December 1988.

Sources: Letters from the Government, latest dated 24 October and 5 December 1989.

Panama: State of emergency proclaimed on 10 June 1987. Terminated on 29 June 1987.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 11 and 30 June 1987.

Papua New Guinea: State of emergency proclaimed on 17 June 1985. Terminated on 21 October 1985.

State of emergency declared on 26 June 1989. On 12 January 1990 extended for a further two months.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Paraguay: State of siege, which had been in force since 1954, was terminated on 9 April 1987.

Sources: Letters from the Government, latest dated 27 April 1987 (reproduced in doc. E/CN.4/Sub.2/1987/18).

Peru:* A state of emergency, which was declared for the first time in 1981, is currently in force in a considerable part of the territory; extension of states of emergency in certain provinces and departments and declaration of new states of emergency are periodically reported.

Sources: Notifications of the Government to the United Nations Secretary-General (latest dated 8 February 1995); letters from the Government addressed to the Centre for Human Rights (latest dated 18 August 1993).

On 5 April 1992, the President of the Republic dissolved the Parliament and suspended, temporarily and partially, the Constitution throughout the territory of Peru. This suspension of constitutional rule ended on 30 December 1992.

Sources: Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Mr. B.W. Ndiaye, on his mission to Peru (E/CN.4/1994/7/Add.2, paras. 16, 21-24, 75, 86-88, 119-120); information published in the press and received from non-governmental organizations.

Philippines:

De facto states of emergency lasting only a few days were imposed in February 1986 during the revolution and at the time of the attempted coup d'état of 28 August 1987.

State of national emergency proclaimed on 6 December 1989. Ended on 7 June 1990.

Sources: Letters from the Government dated 10 December 1987, 2 April 1991 and 21 September 1992.

Russian
Federation:*

On 19 April 1991, a state of emergency was introduced in Vladikavkaz (North Ossetia) for a period of one month and subsequently extended until 19 September, 19 December 1991, 19 April and 10 August 1992.

On 13 June 1991, a state of emergency was introduced in Makhachkala, the capital city of Dagestan, for a period of one month.

On 19 August 1991, a state of emergency was declared in some parts of the USSR for six months by the newly established State Committee for the Emergency Situations. On 22 August 1991, all decrees of this Committee were cancelled by the President of the USSR.

Sources: Statement made by the observer for the USSR at the forty-third session of the Sub-Commission, on 30 August 1991; information received from non-governmental organizations and published in the press.

From 11 to 28 September 1991, a state of emergency was in force in the Kazbek district of Dagestan.

Repeated introduction of states of emergency in the Chechen Republic. A curfew was imposed on 10 February 1992 in its capital, Grozny, for 30 days.

In May 1992, a state of emergency was introduced in Makhachkala and Kizilyourt cities of Dagestan.

Sources: Information published in the press. In a letter dated 19 May 1992, addressed to the Government of the Russian Federation, the Special Rapporteur requested more detailed information regarding the emergency measures taken in some parts of the country and their impact on human rights.

On 10 June 1992, a state of emergency was introduced in several districts of the North Ossetia; curfew imposed in Vladikavkaz.

Sources: Letter from the Government dated 21 July 1992.

On 27 September 1992, a state of emergency was proclaimed in Nalchik, the capital city of Kabardino-Balkaria, for a period of two months; its actual introduction was, however, suspended.

On 2 November 1992, a state of emergency was introduced in the North Ossetia and in the Ingush Republic for a period of one month. Subsequently, the emergency regime in several districts and areas of Ingushetia and North Ossetia was repeatedly extended (last time: from 3 December 1994 to 31 January 1995).

Sources: Notifications of the Government of the Russian Federation to the United Nations Secretary-General dated 3 November 1992, 28 October and 23 December 1993; 22 April, 20 May, 21 June, 12 August, 21 October 1994 and 4 January 1995; letters from the Government dated 4 November and 21 December 1992 and 28 June, 11 August, 25 October and 29 December 1993, 31 May, 20 June and 15 November 1994; information received from non-governmental organizations and published in the press.

State of emergency was decreed from 3 to 10 October 1993 and a curfew introduced in the city of Moscow. Extended until 18 October 1993.

Sources: Notifications of the Government to the United Nations Secretary-General dated 4 and 21 October 1994; letters from the Government dated 4 and 25 October 1993; information published in the press.

On 29 May 1994, a curfew was decreed in the Chechen Republic for one month. Martial law introduced in the Chechen Republic on 12 October 1994.

Sources: Information published in the press.

Rwanda:*

State of siege declared in October 1990.

Sources: Statement by the Minister of Justice of Rwanda of 17 January 1991; information received from non-governmental organizations and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Senegal:

State of emergency was proclaimed from 29 February to 20 May 1988 and from 28 April to 19 May 1989.

Sources: Letters from the Government dated 20 September 1988, 15 January 1990 and 17 March 1993.

Sierra Leone:* State of emergency declared on 2 November 1987. Renewed on 8 March 1988.

On 30 April 1992, a state of emergency was declared and a curfew imposed.

Sources: Information received from non-governmental organizations and published in the press. In a letter dated 19 May 1992, addressed to the Government of Sierra Leone, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Singapore: Emergency legislation currently in force which expressly provides for preventive detention.

Sources: Letter from the Government dated 18 August 1989; information received from non-governmental organizations.

Somalia:* Emergency regulations in force in areas affected by armed conflict.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

South Africa: State of emergency in 36 magisterial districts was proclaimed on 21 July 1985. A country-wide state of emergency has existed since 12 June 1986. Successive proclamations or extensions of states of emergency as well as lifting of some emergency regulations took place in 1987, 1988, 1989 and 1990.

On 7 June 1990, the state of emergency was lifted in all areas of the country, except Natal. The lifting of the state of emergency in Natal province was announced on 18 October 1990.

Sources: Letters from the Government dated 1 September 1988 and 6 July 1989 (cf. E/CN.4/Sub.2/1989/45); information submitted by the Special Committee against Apartheid; information received from non-governmental organizations.

On 28 October 1991, a state of emergency was imposed throughout the Ciskei.

Sources: Report of the Ad Hoc Working Group of Experts on southern Africa (E/CN.4/1992/8, paras. 167 and 168).

In its 1994 report, the Ad Hoc Working Group of Experts stated that in 1993, a large number of magisterial districts had been declared "unrest areas", thus creating a situation analogous to that under the declaration of an emergency (E/CN.4/1994/15, paras. 44 and 136).

On 31 March 1994, a state of emergency was introduced in Natal province. Lifted on 7 September 1994.

Sources: Letter from the Government dated 13 September 1994; information published in the press.

Sri Lanka:*

State of emergency proclaimed on 18 May 1983. Terminated on 11 January 1989.

State of emergency declared on 20 June 1989. Terminated on 4 September 1994, except in the Northern and Eastern provinces and in certain other areas bordering those two provinces.

Sources: Notifications of the Government to the Secretary-General of the United Nations dated 21 and 23 May 1984, 13 January and 18 August 1989 and 29 September 1994; letter from the Government dated 11 April 1991; reports of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1992/18/Add.1, paras. 60-72 and 195; E/CN.4/1993/25/Add.1, paras. 16 and 146 (a)); information received from non-governmental organizations.

Sudan:*

States of emergency proclaimed on 6 April 1985, 25 July 1987 and 30 June 1989. Still in force.

Sources: Notifications of the Government to the United Nations Secretary-General dated 21 August 1991 and 13 February 1992; report of Sudan submitted to the Human Rights Committee (CCPR/C/45/Add.3); report on the situation of human rights in the Sudan, prepared by Mr. G. Bíró, Special Rapporteur of the Commission on Human Rights (E/CN.4/1994/48, paras. 22-23); information received from non-governmental organizations.

Suriname:

State of emergency was in force from August 1980 to 25 February 1986. On 1 December 1986, state of emergency was proclaimed in the eastern part of the country. Terminated on 1 September 1989.

Sources: Letters from the Government dated 5 December 1986 (reproduced in A/41/958), 13 March and 24 June 1991; information received from non-governmental organizations.

Syrian Arab Republic:*

State of emergency proclaimed on 8 March 1963. Still in force.

Sources: Information received from non-governmental organizations. The Special Rapporteur awaits more precise information to be submitted by the Government.

Tajikistan:*

In July 1989, a curfew was introduced in Isfara region.

On 12 February 1990, a state of emergency was declared in the capital, Dushanbe. Lifted on 29 June 1991.

On 23 September 1991, a state of emergency was introduced throughout the republic. Lifted on 30 September 1991.

Sources: Notification of the Government of the USSR to the United Nations Secretary-General dated 23 March 1990; information received from non-governmental organizations and published in the press.

State of emergency proclaimed and a curfew introduced on 5 May 1992. Lifted on 7 May 1992.

In September 1992, a state of emergency was introduced in several districts and towns of Kurgan-Tyube and Kuliab provinces.

On 23 October 1992, a state of emergency and a curfew were decreed in the capital, Dushanbe.

On 7 January 1993, a state of emergency was again declared and a curfew imposed in Dushanbe for a period of one month.

Sources: Information published in the press. In two letters dated 19 May and 28 October 1992, the Special Rapporteur requested the Government of Tajikistan to provide information regarding the emergency measures taken and their impact on human rights.

In February 1993, a state of emergency was declared and a curfew imposed in the whole territory of the country. Extended in July 1994. Still in force.

Sources: Notification of the Government to the secretariat of the Conference on Security and Cooperation in Europe; information published in the press.

Thailand:

Martial law introduced on 23 February 1991. Lifted on 3 May 1991.

On 18 May 1992, a state of emergency was introduced in Bangkok and surrounding provinces. Lifted on 26 May 1992.

Sources: Statement by the observer for Thailand at the forty-third session of the Sub-Commission,

on 22 August 1991; letter from the Government dated 22 July 1992, received in reply to the Special Rapporteur's request for information of 19 May 1992; information published in the press.

Togo: In April and in November 1991, curfews were introduced in Lomé, capital of the republic.

Sources: Report of the Human Rights Committee (A/49/40, para. 253); information published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government.

Trinidad and Tobago: A state of emergency was proclaimed on 28 July 1990 for a period of 90 days and subsequently extended. Remained in force until 9 December 1990.

Sources: Notification of the Government to the Secretary-General of the United Nations dated 15 August 1990; letter from the Government dated 12 March 1993.

Turkey:* Martial law, which was introduced on 26 December 1978 in 13 provinces, was proclaimed throughout the entire territory on 12 September 1980. As at 1 January 1985, it was in force in 34 provinces. By 19 July 1987 martial law was lifted throughout the country. In 1985-1987, in certain provinces, martial law was replaced by a state of emergency which is currently in force in 10 provinces in south-east Anatolia.

Sources: Letters from the Government dated 9 June 1987, 19 July 1988 and 15 February 1991; information received from non-governmental organizations.

Uganda: The existence of a de facto state of emergency has been reported, related particularly to the application of the Public Order and Security Act of 1967.

Sources: Information received from a non-governmental organization. The Special Rapporteur awaits more precise information to be submitted by the Government.

United Kingdom of Great Britain and Northern Ireland:* Since 1974, a public emergency exists relating to the affairs of Northern Ireland.

Sources: Notifications of the Government to the United Nations Secretary-General dated 23 December 1988 and 23 March 1989; communication from the Government received by the Secretary-General on 18 December 1989; reports to the Human Rights Committee (latest documents: CCPR/C/58/Add.6, paras. 57-60; CCPR/C/58/Add.12, para. 18).

United States
of America:

States of emergency proclaimed and curfews imposed in Los Angeles, San Francisco, Las Vegas, Atlanta and some other places for short periods at the end of April-beginning of May 1992.

Sources: Letter from the Government dated 1 June 1992, received in reply to Special Rapporteur's request for information of 18 May 1992; information published in the press.

Uzbekistan:

On 4 June 1989, a curfew was introduced in several townships of Fergana district.

Sources: Information received from a non-governmental organization and published in the press. In a letter dated 19 May 1992, addressed to the Government of Uzbekistan, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Venezuela:*

Emergency measures and suspension of certain constitutional guarantees were decreed on 28 February 1989.

On 22 March 1989, all the constitutional safeguards were re-established.

Sources: Notifications of the Government to the United Nations Secretary-General dated 17 and 31 March 1989; letters from the Government dated 3 and 18 April 1989 and 7 December 1990.

On 4 February 1992, certain constitutional guarantees were suspended. On 13 February 1992, a partial restoration of previously suspended guarantees was decreed. By a decree dated 9 April 1992, the President of the Republic has restored all constitutional guarantees.

Sources: Notifications of the Government to the United Nations Secretary-General dated 4 and 21 February and 24 April 1992; letter from the Government dated 11 February 1992.

On 27 November 1992, suspension of certain constitutional guarantees was decreed. By decrees dated 1 and 22 December 1992 and 16 January 1993, all constitutional guarantees were restored.

From 16 to 25 January 1993, certain constitutional guarantees were again suspended in some parts of the national territory.

Sources: Letter from the Government dated 1 April 1993; information received from non-governmental organizations.

On 27 June 1994, certain constitutional guarantees were suspended in the whole territory of the country. The Government stated that this measure was motivated by the alarming financial and economic situation, which might endanger public security.

By decree dated 6 July 1995, the constitutional guarantees were restored throughout the national territory with the exception of some border autonomous municipalities.

Source: Notifications of the Government to the Secretary-General of the United Nations dated 29 June 1994, and 18 July 1995; letters from the Government dated 3 and 7 June 1996.

Yemen:*

On 5 May 1994, a 30-day state of emergency was declared and a curfew imposed in the whole territory of the country.

Sources: Information published in the press. In a letter dated 16 May 1994, addressed to the Government of Yemen, the Special Rapporteur requested more detailed information regarding the emergency measures taken and their impact on human rights.

Yugoslavia:*

On 28 March 1989, special measures involving suspension of freedoms of assembly and movement were introduced in the province of Kosovo. On 18 April 1990, all the emergency measures in the territory of the province were lifted.

Sources: Notifications of the Government to the United Nations Secretary-General dated 14 April 1989, 29 May 1989, 19 March 1990 and 24 April 1990.

On 18 October 1991, the "existence of an immediate threat of war" was established by the decision of the Presidency of the SFRY throughout the territory of the country.

Sources: Letters from the Government dated 18 and 21 February 1992.

Except for Slovenia, the other newly emerged States which made up the former Yugoslavia found themselves in a de facto state of emergency at the moment of their transition to independence.

Sources: Periodic reports on the situation of human rights in the territory of the former Yugoslavia submitted by the Special Rapporteurs of the Commission on Human Rights, Mr. T. Mazowiecki, (E/CN.4/1994/47), and Ms. E. Rehn (E/CN.4/1996/63, paras. 115-180); information published in the press.

Zaire: In a letter dated 28 October 1991, addressed to the Government of Zaire, the Special Rapporteur requested more detailed information regarding the emergency measures taken in connection with September riots in the country, and their impact on human rights.

A non-governmental source later advised the Special Rapporteur that those measures did not constitute a state of emergency and were of very short duration. The Special Rapporteur therefore awaits more precise information to be submitted by the Government of Zaire.

Zambia:* State of emergency introduced on 27 July 1964. Lifted in 1991.

State of emergency declared on 4 March 1993.

Sources: Information received from a non-governmental organization and published in the press. The Special Rapporteur awaits more precise information to be submitted by the Government of Zambia in reply to his letter dated 17 June 1993.

Zimbabwe: State of emergency, which had been in force since November 1965, was lifted on 25 July 1990.

Sources: Letters from the Government dated 23 March and 12 July 1988; information received from non-governmental organizations.

38. The Special Rapporteur is aware of the possibility that the existence of a state of emergency in other countries might not have come to his knowledge and trusts that the cooperation of States and intergovernmental and non-governmental organizations in the procedure being applied will soon enable him to give a full account of the situation worldwide.

Notes

1/ See E/CN.4/Sub.2/1995/16, para. 39.

2/ We refer here, inter alia, to the rights contemplated as non-derogable in paragraphs 2 of articles 4, 15 and 27 of the International Covenant, the European Convention and the American Convention, respectively.

3/ See Daniel O'Donnell, in Los Derechos No Susceptibles de Deroqación durante los Estados o las Situaciones de Excepción (forthcoming).

4/ See Denise Plattner, in Le Droit international humanitaire et le noyau intangible du droit international des droits de l'homme.

5/ See Antonio Augusto Cançado Trindade, in Los Derechos No Susceptibles de Deroqación durante los Estados o las Situaciones de Excepción.

6/ See Alfredo de Zayas, *ibid.*

Annex

LIST OF REPLIES AND OTHER COMMUNICATIONS RECEIVED*

A. Governments

Colombia	4 September 1995 and 22 February 1996
Venezuela	3 and 7 June 1996

B. Non-governmental organizations

Amnesty International	November 1995
Asian Human Rights Commission - Asian Legal Resource Centre	7 February 1996
International Federation of Human Rights	20 February 1996
Minority Rights Group International	April 1996
Committee on the Administration of Justice (CAJ), Belfast	February 1996

* Since June 1995, when the eighth report (E/CN.4/Sub.2/1995/20) was issued.